No._____

IN THE

SUPREME COURT OF THE UNITED STATES

WICHITA FALLS JUNIOR COLLEGE DISTRICT, ET AL, *Petitioners*

versus

WILLIE FAYE BATTLE, ET AL, *Respondents*

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petition of the Wichita Falls Junior College District and other Appellants in the Court of Appeals for the issuance of a Writ of Certiorari to the Court of Appeals for the Fifth Circuit respectfully represents:

I.

SUMMARY OF THE MATTER INVOLVED

Six Negro students, for themselves and others similarly situated, sought to matriculate at Hardin Junior College. They were denied admission under the Constitution and Laws of the State of Texas solely because of their race and color, there being within the State two other schools with equivalent facilities maintained solely for Negro students which, it was thought, met the requirements of the Texas Constitution and Statutes (which are copied in the footnotes of the opinion

of the Circuit Court) and which require separate, though equal, educational opportunities for the two races within the state.

They filed this suit to secure their admittance, and the trial court decreed that their prayer should be granted. The Court of Appeals affirmed. A motion for rehearing was timely filed in the Court of Appeals and overruled on June 8, 1953.

II.

BASIS OF COURT'S JURISDICTION

The Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court.

Though finding that there are within the State of Texas two institutions of higher learning that are in all things equal to Hardin Junior College and which are maintained solely for Negroes, yet the Court of Appeals concluded that since neither of such institutions for Negroes was within the Wichita Falls Junior College District, since it would be more costly and less convenient for Negroes to attend such schools than the one provided for non-Negro students in Wichita Falls, unlawful discrimination existed under the Fourteenth Amendment to the Constitution of the United States, Section 1, and Title 8 U.S.C., Section 41.

This Court has consistently held that education is a matter to be provided by the several states, that segregation is not unconstitutional provided equivalent facilities are furnished, and has impliedly held that

the constitutional requirement for equivalent facilities is met by providing *within the State* facilities for one race that are equivalent to those provided for another. The Circuit Court is not in accord with such holdings.

III.

THE QUESTION PRESENTED

The sole question which this Petition raises is whether equivalent facilities must be furnished non-Negro students the same as Negro students by the State of Texas within every geographical subdivision of the vast educational system of Texas, or whether the Constitutional mandate is sufficiently met by providing for the two groups separate but equivalent facilities within its borders.

IV.

REASONS RELIED ON

This case is altogether as important to the jurisprudence of the United States as *any* case on segregation now before this Court under submission or otherwise. It involves the basic question of the validity of segregation as such, heretofore considered settled by repeated decisions of this Court. If this judgment stands, then under it there can be no segregation at all in Texas. It will apply alike to all schools, whether senior colleges, junior colleges, high schools or elementary schoos, and either a Negro or non-Negro may go to the school closest to him that is most convenient for him, even though there be equivalent facilities separately

offered within the state, county, district, city or other geographical subdivision of the State.

Had there been two schools within the District here involved, one for Negroes and one for non-Negroes, but the one provided for the non-Negroes had been a little closer and less expensive to attend for Respondents, they still would have prevailed in the Courts below. So also as to any student of any grade. Hence, the ruling is a death blow to segregation in Texas, whose Constitution and laws prescribe separate though equal facilities within the State.

It is a State function to educate its citizens. The Federal Government has not yet undertaken to participate therein with the State. All that the Federal Government is concerned with is that facilities and opportunities may be reasonably applicable alike to white and colored children, *within the boundaries of the state.*

No court anywhere has ever held, within my knowledge, that equivalent facilities for higher education must be provided within the boundaries of every hamlet, town, village and city within a state. Such would destroy the very concept of segregation. The Federal Constitution only requires that equivalent facilities for higher education need be maintained within the state.

The State of Texas has undertaken to provide educational facilities and opportunities alike to the white and colored children of the State. Its educational system is broad and comprehensive, with various schools

over the State from the lowest grades to a university of the first class.

This Court has never yet held that equivalent facilities must be maintained within every geographical division of the vast educational system of Texas, or of any other state. It is implicit in many of such decisions that such equivalence need only be within the state. To hold otherwise would be absolutely to destroy the segregation that has been recognized as valid throughout the years. Should such principle be pronounced as law in this case, then children in a servant's house in a white portion of a city would have the right to enter the white school of such district and be not required to attend a school maintained for Negro children in the colored section of such city. Distance and convenience would control. This would absolutely destroy the segregation that has been recognized as law throughout the years.

It is thought that this Court will not destroy the principle of segregation which it has recognized since the Civil War. In fact, much of its language supports the view that equivalence of opportunity is left to the several states and that if within a state there be institutions offering such equivalent facilities, that the requirements of the Federal Constitution are met.

V.

PRAYER

For the above reasons, your Petitioners pray for the issuance of a Writ of Certiorari under the Seal of this Court directed to the United States Court of Appeals for the Fifth Circuit, commanding said Court to certify the above cause to this Court for review and a proper determination of the question involved, and for any and all other relief to which they may be entitled in the premises.

Respectfully submitted,

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